

85C. REPEAT NUISANCE SERVICE CALLS

85C.01. Purpose. The City Council recognizes that the City has limited staff and resources, and finds that repeated responses to nuisance service calls present a burden to the community at large because they limit the availability of law enforcement and public safety protection services to other residents of the City. The purpose of this chapter is to protect the public safety, health, and welfare, and to prevent and abate repeated service response calls by the City to the same property or location for nuisance service calls, which prevent police or public safety services to other residents of the City. It is the City's intent to impose and collect service call fees from the owner, occupant, responsible party, or any combination thereof, of property to which City officials must repeatedly respond for any repeated nuisance event or activity that generates extraordinary costs to the City. The repeat nuisance service call fee is intended to cover that cost over and above the cost of providing normal law or code enforcement services and police protection City-wide.

85C.02. Scope and Applicability. This chapter applies to all owners, occupants, and responsible parties of private property which is the subject or location of the Repeat Nuisance Service Calls by the City. This chapter shall apply to any Repeat Nuisance Service Calls as set forth herein made by City Personnel as hereinafter defined.

85C.03 Definitions. Subdivision 1. The term "Nuisance Conduct" shall mean any activity, conduct, or condition occurring upon private property within the city which: (i) unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any member of the public; or (ii) or will tend to alarm, anger, or disturb others to provoke breach of the peace, to which the City is required to respond. The term "Nuisance Conduct" includes, but is not limited to, the following:

- (A) Any activity, conduct, or condition deemed as a public nuisance under any provision of chapter 40;
- (B) Any activity, conduct, or condition deemed as a public nuisance under any provision of this Code;
- (C) Any activity, conduct, or condition constituting disorderly conduct under chapter 609 of the Minnesota Statutes;

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- (D) Any activity, conduct, or condition constituting disorderly house under chapter 609.33 of the Minnesota Statutes; or
- (E) Any activity, conduct, or condition constituting a violation of any Minnesota state law prohibiting or regulating prostitution, gambling, controlled substances, use of firearms.

Subd. 2 Except as provided in section 85C.07, the term “Repeat Nuisance Service Calls” means three or more calls requesting City Personnel services in response to a claim of Nuisance Conduct where the calls occurred within a 365-day time period to the same private property.

Subd. 3 The term “Repeat Nuisance Service Call Fee” shall mean the fee imposed upon the Responsible Party as a result of Repeat Nuisance Service Calls.

Subd. 4 The term “Responsible Party” shall mean the Owner or Occupant of private property where the Repeat Nuisance Service Calls occurred, or the person responsible or involved in the Nuisance Conduct regardless of where the Repeat Nuisance Service Calls occurred.

Subd. 5 The terms “Owner” and “Occupant” shall mean any person who, alone or jointly and severally with others, has:

- (A) Legal title to any private property, with or without accompanying actual possession thereof;
- (B) Charge, care, or control of any private property as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner. Any such partnership, corporation, or person representing the actual owner shall be bound to comply with the provisions of this chapter to the same extent as if they were the owner; or
- (C) Possession of, or the right of control over, the use of private property including without limitation a person who may be a fee owner, lessee, renter, tenant, lessor, contract for deed vendee, licensor, licensee, or occupant; provided that:
 - (1) A lessor of real property under a lease which in substance is a financing device and is treated as such under the United

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States Internal Revenue Code, common law, or statute, is not an owner of the real property;

- (2) Any person holding a remainder or other nonpossessory interest or estate in real property is an owner of the real property beginning when that person's interest or estate in the real property vests in possession or that person obtains the unconditioned right to possession, or to control the use of, the real property; and
- (3) The state or an agency of the state is not an owner of real property solely because it holds title to the property in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

Subd. 6 The term "Occupant" shall mean any person, over one year of age, living, sleeping, cooking, or having actual possession of private property.

Subd. 7 The term "Private Property" shall mean any location, including a house, apartment unit, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, yard, field, park, or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or residence or specifically for a social or business function, and whether owned, leased, rented or used with or without permission or compensation that is privately owned. The term "Private Property" does not include an establishment licensed by chapter 125A for the sale of alcoholic beverages.

Subd. 8 The term "City Personnel" shall include, but is not limited to, peace officers of the Rochester Police Department and Olmsted County Sheriff's Office, community service officers, and animal control officers.

85C.04. Repeat Nuisance Service Call Fee. Subdivision 1. The City may impose a Repeat Nuisance Service Call Fee upon the Responsible Party of a Private Property if the City has received Repeat Nuisance Service Calls.

Subd. 2. The Council will adopt the Repeat Nuisance Service Call Fee by resolution.

Subd. 3. A Repeat Nuisance Service Call Fee imposed under this section will be deemed delinquent if it is not paid within 30 days after the City

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mails the billing statement for the fee to the Responsible Party. The City will add a 10% late penalty to a delinquent payment.

85C.05. Notice. Subdivision 1. No Repeat Nuisance Service Call Fee may be imposed against a Responsible Party without first providing the Responsible Party with written notice.

Subd. 2. The written notice shall:

- (A) Identify the Nuisance Conduct that is occurring, has occurred or is allowed to occur on the Private Property, and the dates of occurrence;
- (B) State the responsible party may be subject to a Repeat Nuisance Call Fee if City Personnel respond to another claim of Nuisance Conduct upon the Private Property;
- (C) State that the City has the right to seek other legal remedies or actions for abatement of the nuisance or compliance with the law; and
- (D) Be served personally; be served by United States mail upon the Responsible Party at the last known address; or be posted on the Private Property.

85C.06. Recovery of Fee; Right to Hearing; Right to Appeal. Subdivision 1. The failure to pay a Repeat Nuisance Service Call Fee shall result in the issuance of an Administrative Citation. The enforcement of that Administrative Citation, along with the attendant rights of appeal, shall occur as provided by chapter 5.

Subd. 2. Failure of a person to pay a Repeat Nuisance Service Call Fee shall be grounds for the denial of a license which is related to the Nuisance Conduct for which the Fee was imposed.

85C.07. Exceptions. Subdivision 1. The occurrences described in this section shall not be considered as a Repeat Nuisance Service Call.

Subd. 2. A medically-related emergency response other than medical-related emergencies that are violations of Minn. Stat. 609.78 subd. 1 (4).

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Subd. 3. A call by a victim in response to circumstances involving domestic assault incidents or order for protection violations.

Subd. 4. A call by a victim of Nuisance Conduct.

Subd. 5. A call requesting City Personnel services in which City Personnel determine no services can be provided because the claim of Nuisance Conduct cannot be substantiated or verified.

85C.08. Waiver. Subdivision 1. At the discretion of City Personnel, Repeat Nuisance Service Call Fees may be waived against an owner of rental property who has commenced eviction proceedings against the tenant or tenants responsible for the Nuisance Conduct.

Subd. 2. At the discretion of City Personnel, Repeat Nuisance Service Call Fees may be waived against an owner or occupant of property upon which a commercial business is being operated who has entered into and complied with a memorandum of understanding with the City that addresses underlying causes for the Nuisance Conduct and provides a course of action to alleviate the Nuisance Conduct.

85C.09. Legal Remedy Non-Exclusive. Subdivision 1. Nothing in this chapter shall be construed to limit the City's other available legal remedies for any violation of the law, which may constitute a nuisance service call hereunder, including criminal, civil, injunctive, or other remedy.

Subd. 2. Nothing in this chapter shall be construed to require that formal charges be brought in order for conduct, activity, or condition to qualify as a Nuisance Conduct.

(4028, 10/3/11)